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§§ 114-119; Dec. Dig. § 39.* 12 Va.-W. Va. Enc. Dig. 625, et seq.; 14 id. 942.]

2. Equity (§ 381*)—Issues Out of Chancery—Effect of Verdict.—The verdict of a jury on an issue out of chancery is advisory only, and, if not satisfactory to the court, may be wholly disregarded.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 815-817; Dec. Dig. § 381.* 8 Va.-W. Va. Enc. Dig. 70.]

3. Specific Performance (§ 121*)—Parol Agreements—Part Performance—Sufficiency of Evidence.—In an action for specific performance of a parol agreement for the conveyance of land, based on part performance, evidence held insufficient to show that complainant had taken possession of the property by virtue of the agreement, but by virtue of a lease, and that there was no change in the situation of the complainant which could not be compensated in damages.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. §§ 392, 395; Dec. Dig. § 121.* 12 Va.-W. Va. Enc. Dig. 625, et seq.; 14 id. 942.]

Appeal from Circuit Court, Prince William County.

Suit by Lillie Jeffries against one Carter. From a decree for complainant, defendant appeals, Reversed.

Thos. H. Lion and John M. Johnson, for appellant.

Walton Moore, D. S. Mackall, J. C. Gittings, and J. M. Chamberlin, for appellee.

SECURITY LOAN & TRUST CO. *v.* FIELDS.

March 10, 1910.

[67 S. E. 342.]

1. Bills and Notes (§ 462*)—Action by Motion on Notice—Sufficiency of Notice.—Under Code 1904, § 3311, allowing suit on notes by motion on notice, while the notice takes the place of both the writ and the declaration, and is viewed with indulgence, this does not relieve plaintiff of the requirement that he set out in his notice matters sufficient to maintain the action.

[Ed. Note.—For other cases, see Bills and Notes, Dec. Dig. § 462.* 10 Va.-W. Va. Enc. Dig. 128.]

2. Bills and Notes (§ 469*)—Action against Indorser—Motion on Notice—Sufficiency of Notice.—Under Code 1904, § 3311, authorizing

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

a suit on a note by motion and notice, a notice alleging a cause of action by the holder against the indorser, which fails to show that the note was protested or notice of dishonor given, does not state a cause of action.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 1494-1502; Dec. Dig. § 469.* 10 Va.-W. Va. Enc. Dig. 128.]

3. Bills and Notes (§ 422*)—Waiver of Protest.—A medical company by its proper officers executed a note payable at a bank. The payee, a loan company, then indorsed the note in blank. The president of the medical company was also president of the loan company. The note was not presented at the bank at maturity; but three days after maturity the note was presented to the president of the loan company, and he wrote on the note, "The medical company is indebted to the loan company," and returned the note. Held, that a contention that since the president acted for both companies, and placed his refusal to pay on the ground of an indebtedness by the maker to the indorser, it was a waiver of release of the indorser by failure of the holder to present at maturity, could not be sustained, where there was no showing that the president was the proper person to whom to present the note, or that he had any authority to waive the nonliability of the indorser caused by the failure to present.

[Ed. Note.—For other cases, see Bills and Notes, Dec. Dig. § 422.* 2 Va.-W. Va. Enc. Dig. 459.]

4. Bills and Notes (§ 422*)—Release of Indorser—Waiver of Rights.—A waiver of legal rights will not be implied, except on clear and unmistakable proof of an intention to waive such rights.

[Ed. Note.—For other cases, see Bills and Notes, Dec. Dig. § 422.* 13 Va.-W. Va. Enc. Dig. 637.]

Error to Law and Chancery Court of City of Norfolk.

Action by John Fields, Jr., against the Security Loan & Trust Company. From a judgment for plaintiff, defendant brings error. Reversed.

Jeffries, Wolcott, Wolcott & Lankford, for plaintiff in error.

Thos. W. Shelton, for defendant in error.

DIX v. COMMONWEALTH.

March 10, 1910.

[67 S. E. 344.]

1. Intoxicating Liquors (§ 215*)—Prosecution—Indictment—Sufficiency.—An indictment alleging that accused, within six months last past, in a certain magisterial district in the county, unlawfully sold

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.